



**Rules and Ancillary Document Review Checklist**  
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-218 (Advertising agencies)**

Date last adopted: **March 30, 1983**

Reviewer: **D. Douglas Titus**

Date review completed: **April 13, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Explain the goal(s) and purpose(s) of the document:**

**This rule explains application of B&O, retail sales, and use taxes to services provided by advertising agencies and sales or purchase of tangible personal property by advertising agencies. Rule 218 distinguishes between the circumstances in which the services of an advertising agency are taxed under the B&O services classification, and those in which the taxpayer is deemed to be making retail sales of tangible personal property. It recognizes that advertising agencies not only make sales of tangible personal property to clients, but also purchase such articles as agents for the clients, advancing payment therefor. These different functions produce differing B&O, retail sales, and use tax consequences.**

**2. Need:**

YES	NO	
<b>X</b>		Is the document necessary to comply with or clarify the application of the statutes that are being implemented? (E.g., does it provide detailed information not found in the statutes, reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied, etc?)
	<b>X</b>	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	<b>X</b>	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
<b>X</b>		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)



Please explain. **This rule provides important tax-reporting information that reduces the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities.**

**3. Related ancillary documents, court decisions, BTA decisions, and WTDs:** Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
X		Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
	NA	Should this ancillary document be incorporated into a rule?
	NA	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affect the information now provided in this document?
	NA	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief explanation of the issue(s).

**Information from the following should be incorporated into this rule:**

- **ETA 308.04.224 (“Art Work” Distinguished ), explains that charges for the reproduction rights of art work used in advertising are not sales at retail and advertising or commercial artists engaged in these activities are subject to tax under the "Service and Other Activities" classification of the Business and Occupation Tax.**

**4. Clarity and Effectiveness:**

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve?
	X	Do changes in industry business methods warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain. **The rule as written is organized in a clear manner, and is effective as written. It will be more effective, however, if pertinent information now located elsewhere is incorporated into Rule 218. This rule should be revised accordingly as follows:**

- To incorporate information now contained in ETA 308.04.224 and the sixth and fifteenth paragraphs of WAC 458-20-144 (Printing industry);
- To incorporate the information now contained in WAC 458-20-204 (Outdoor advertising and advertising display services); and
- To adopt the rule format currently utilized by the Code Reviser's Office and the Department.

**5. Intent and Statutory Authority:**

YES	NO	
X		Does the Department have sufficient authority <b>to adopt</b> this document? (Cite the statutory authority in the explanation below.)
X		Is the information provided in the document consistent with the statute(s) that it was designed <b>to implement</b> ? (If "no", identify the specific statute and explain below. List all statutes being implemented in Subsection 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain. **This rule was adopted under the provisions of RCW 82.32.300, which authorizes the Department to adopt and publish rules to explain the provisions of the Revenue Act.**

**6. Coordination:** Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain. **The Department of Revenue has the exclusive authority to administer the B&O and retail sales taxes in this area.**



**7. Cost:** When responding, consider only the costs imposed by the document and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain. **This is an interpretive rule that imposes no new or additional administrative burdens on businesses that are not already imposed by law.**

**8. Fairness:** When responding, consider only the impacts imposed by the document and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?

Please explain. **This document currently results in the equitable treatment of those required to comply with it.**

**9. LISTING OF DOCUMENTS REVIEWED:** (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **To the extent these statutes apply to taxation of advertising agencies:**

- **RCW 82.04.040 (Defines “sale”);**
- **RCW 82.04.050 (“Sale at retail,” “retail sale”);**
- **RCW 82.04.055 (“Sale at wholesale,” Wholesale sale”);**
- **RCW 82.04.070 (Defines “gross proceeds of sales”;**
- **RCW 82.04.080 (Defines “gross income of the business”);**
- **RCW 82.04.130 (Defines “commercial or industrial use”);**
- **RCW 82.04.190 (Defines “consumer”);**
- **RCW 82.04.220 (Business and occupation tax imposed);**
- **RCW 82.04.250 (Tax on retailers);**
- **RCW 82.04.290 (Tax on . . . service activities);**
- **RCW 82.04.440 (Persons taxable on multiple activities—Credits);**
- **RCW 82.08.020 (Tax imposed--Retail sales . . .);**
- **RCW 82.08.130 (Resale certificate—Purchase and resale—Rules); and**
- **RCW 82.12.020 (Use tax imposed).**



Ancillary Documents (i.e., ETAs, PTBs, and ADs):

- **ETA 308.04.224 (“Art Work” Distinguished ), was previously reviewed in conjunction with WAC 458-20-224 (Service and other business activities) where it was recommended that information therein be either incorporated into Rule 144 or Rule 218.**

Court Decisions: **None**

Board of Tax Appeals Decisions (BTAs): **None**

Administrative Decisions (e.g., WTDs):

- **Determination No. 92-261R, 13 WTD 151 (1993), held that where charges for tangible personal property are specifically itemized on a billing document the transaction reflected will be considered a retail sale;**
- **Determination No. 92-260, 12 WTD 425 (1992), distinguished between activities of advertising agencies which would be classified as services and others, such as the delivery of photographs or developed film, which would be classified as retail sales;**
- **Determination No. 91-149, 11 WTD 189 (1991), held that Rule 218 does not require that an advertising agency, purchasing brochures for the direct use of the client from an out of state vendor as agent for the client and advancing funds in payment thereof, to pay use tax for the client;**
- **Determination No. 88-10, 4 WTD 437 (1987), not only held that persons who both print and publish circulars are taxable under the printing and publishing B&O classification, but also explained that where the taxpayer publishes or distributes advertising circulars only and does not print them, it does not qualify for the lower tax rate of printing/publishing B&O tax;**
- **Determination No. 87-347, 4 WTD 273 (1987), held that a mailing bureau that does not label, fold, enclose, and/or seal advertising materials does not meet the requirements of WAC 458-20-141 as a mailing bureau and is thus not making retail sales;**
- **Determination No. 86-232, 1 WTD 093 (1986), held that commercial artwork that is a finished product for outright sale to a consumer is subject to the retailing B&O tax and retail sales tax.**

Attorneys General Opinions (AGOs): **None**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

**Rule 218 refers to the following regulations:**

- **WAC 458-20-134 (Commercial or industrial use);**
- **WAC 458-20-144 (Printing industry); and**
- **WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property).**

**The following regulations were also examined for this review:**

- **WAC 458-20-111 (Advances and reimbursements);**



- WAC 458-20-141 (Duplicating industry and mailing bureaus);
- WAC 458-20-204 (Outdoor advertising and advertising display services); and
- WAC 458-20-224 (Service and other business activities).

The following statute was also examined during this review:

- RCW 82.04.280 (Tax on printers, publishers, and others).

**10. Review Recommendation:**

- ☒ Amend
- ☐ Repeal
- ☐ Leave as is
- ☐ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)
- ☐ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

**Explanation of recommendation:** (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

**The rule should be revised to consolidate and combine the provisions of Rules 218 and 204 into one rule, and to include the information contained in ETA 308.04.224, and portions of Rule 144.**

**11. Manager action:** Date: \_\_\_\_\_

\_\_\_\_\_ Reviewed recommendation      \_\_\_\_\_ Accepted recommendation

\_\_\_\_\_ Returned for further action

Comments: